

121 (c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably
 122 refused to correct a deficient condition or failed to use due diligence to correct a deficient
 123 condition, the renter is entitled to any damages, in addition to the applicable renter remedy[;
 124 to:].

125 [~~(i) any damages, and~~]

126 [~~(ii) court costs and a reasonable attorney fee.~~]

127 (d) An owner who disputes that a condition of the residential rental unit violates a
 128 requirement of the rental agreement may file a counterclaim in an action brought against the
 129 owner under Subsection (5)(a).

130 (6) An owner may not be held liable under this chapter for a claim for mental suffering
 131 or anguish.

132 (7) In an action under this chapter, the court ~~shall~~ may ~~award costs and~~
 132a reasonable attorney
 133 fees to the prevailing party.

134 Section 2. Section **78B-6-811** is amended to read:

135 **78B-6-811. Judgment for restitution, damages, and rent -- Immediate**
 136 **enforcement.**

137 (1) (a) A judgment may be entered upon the merits or upon default.

138 (b) A judgment entered in favor of the plaintiff shall include an order for the restitution
 139 of the premises as provided in Section **78B-6-812**.

140 (c) If the proceeding is for unlawful detainer after neglect or failure to perform any
 141 condition or covenant of the lease or agreement under which the property is held, or after
 142 default in the payment of rent, the judgment shall also declare the forfeiture of the lease or
 143 agreement.

144 (d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any
 145 obligation for payments on a lease for the remainder of the lease's term.

146 (ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate
 147 damages.

148 (2) The jury or the court, if the proceeding is tried without a jury or upon the
 149 defendant's default, shall also assess the damages resulting to the plaintiff from any of the
 150 following:

151 (a) forcible entry;

152 (b) forcible or unlawful detainer;

153 (c) waste of the premises during the defendant's tenancy, if waste is alleged in the
154 complaint and proved at trial;

155 (d) the amounts due under the contract, if the alleged unlawful detainer is after default
156 in the payment of amounts due under the contract; and

157 (e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107
158 through 78B-6-1114.

159 (3) The judgment shall be entered against the defendant for the rent, for three times the
160 amount of the damages assessed under Subsections (2)(a) through (2)(e)[~~and for reasonable~~
161 ~~attorney fees~~].

162 (4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be
163 issued immediately after the entry of the judgment.

164 (b) In all cases, the judgment may be issued and enforced immediately.

165 (5) In an action under this chapter, the court ~~§→ shall~~ may ~~←§~~ award costs and
165a reasonable attorney
166 fees to the prevailing party.

Legislative Review Note
Office of Legislative Research and General Counsel